

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO No.918 of 2016 (O&M)

Date of Decision: February 08, 2016

Batra Engineering Plot No.81, Phase-(1), Udyog Vihar, Gurgaon

...Appellant

Versus

ESI Corporation, Gurgaon

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Ajay Bhardwaj, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.2776-CII of 2016

Prayer in this application is for condoning the delay of 14 days
in re-filing the appeal.

The reason assigned for the delay is that after the filing of the
appeal, certain objections were raised by the Registry. After removal of the
said objections, the appeal was re-filed. In that process, delay of 14 days in
re-filing the appeal has occurred. The application is supported by the
affidavit of the counsel.

For the reasons mentioned in the application, the same is
allowed.

Delay of 14 days in re-filing the appeal stands condoned.

CM No.2777-CII of 2016

Prayer in this application is for condoning the delay of 1 day in
filing the appeal.

For the reasons mentioned in the application which is

supported by the affidavit of the applicant-appellant, the same is allowed.

Delay of 1 day in filing the appeal stands condoned.

FAO No.918 of 2016

Challenge in this appeal is to the order dated 23.09.2015 passed by the Employees' Insurance Court, Gurgaon, whereby a petition under Section 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the ESI Act) preferred by the appellant-petitioner claiming compensation on the ground of malicious prosecution which was initiated against the appellant by the officials of the respondent-ESI Corporation, has been dismissed.

2. It is the contention of learned counsel for the appellant that initially a demand was created upon the appellant under Section 45-A of the ESI Act treating the factory being covered by the ESI Act. Two complaints were also filed before the Chief Judicial Magistrate, Faridabad, one for non-payment of contribution and other for non-submission of return bearing complaint No.08/99 and 09/99 respectively. The partner of the firm Colonel J.M. Batra was released on bail and the trial commenced against him. In the meanwhile, the appellant filed a petition challenging the order of the respondent under Section 75 of the ESI Act whereby the appellant/petitioner-firm was treated as being covered under the ESI Act. The said order was set aside on the basis of the pleadings and the evidence led by the parties holding therein that there were only seven employees working in the appellant-firm and, therefore, the provisions under Section 2 (12) of the ESI Act which mandated ten employees at least for a firm/factory to be covered under the said Act having not been fulfilled, the said order was set aside. Contribution as made, was ordered to be refunded

to the petitioner as per Rules. The said order is dated 18.02.2013 (Annexure A-1). Counsel on the basis of this order, asserts that the proceedings which have been initiated against the appellant-petitioner in the form of complaint, were with an intention to harm the appellant-firm and was not a *bona fide* action on the part of the officials of the respondent. He contends that it was with an intention to harass and defame and to extract illegal money from the appellant-firm but the Court below has not appreciated the pleadings and has proceeded to hold wrongly that the appellant has not been able to establish the *mala fide* intention on the part of Mr. R.S. Taneja, official of the respondent, who had initiated the proceedings against the partner of the firm. He contends that on 27 dates, the partner of the firm had to appear before the Criminal Court at Faridabad as he was arrayed as an accused in two complaints initiated against him by the ESI. He contends that after allowing of the petition under Section 75 of the ESI Act by the Employees State Insurance Court, Gurgaon, on 18.02.2013, the two criminal complaints initiated against the petitioner-firm have been dropped. He contends that in the light of the finding given by the ESI Court by order dated 18.02.2013, the proceedings as initiated by the appellant-petitioner for compensation, should have been accepted. Prayer has, thus, been made for setting aside the impugned order and for granting compensation along with interest.

3. An assertion has also been made that the interest has not been paid to the appellant-petitioner on the amount of refund which was ordered to be deposited under Section 45-A before the petition under Section 75 of the ESI Act could be filed in the Employees State Insurance Court, Gurgaon, as it is a prerequisite for challenging the order, holding the factory

to be covered under the said Act. He, thus, contends that the present appeal may be allowed.

4. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned order.

5. Perusal of the impugned order would show that although an assertion has been made that he had appeared on 27 dates in the Criminal Court at Faridabad in two complaints which had been initiated but nothing was brought on record which would indicate as to whether he had actually appeared before the Court or not, nor is there any evidence which would show that certain expenses were incurred by him in going to the Court either on the driver or the fuel for running the car. In the absence of any evidence, the Court could not have granted the compensation amount, especially when the basic ingredients for holding the respondent or its official guilty of malicious prosecution, have not been fulfilled. There is no *mala fide* proved against Shri R.S. Taneja and it is not the case of the appellant that he was either inimical towards him or had any personal enmity or grudge against the partner of the petitioner-firm. When the basic ingredients having not been established, the findings as recorded by the Court below, cannot be said to be without any basis or because of non-consideration of the pleadings and the evidence brought on record.

6. Counsel for the appellant has referred to the judgment passed by this Court in *Gurmukh Singh and another Versus Bhagat Singh and others 2010(3) R.C.R. (Criminal) 253*, to contend that as far as the mental agony suffered by a person is concerned, it is not possible for the appellant to lead evidence showing positive damage. The principle as laid down in the

said judgment cannot be faulted with, however, in the absence of any evidence to the effect that any loss has been caused to the appellant or he had incurred any expenses in the said process of visiting the Court, especially when there is nothing *mala fide* found against the officials of the respondent, the said judgment would not be of any help to the case of the appellant.

7. As regards the contention of learned counsel for the appellant that the refunded amount of the ESI contribution has been returned without any interest, suffice it to say that had the appellant been unsatisfied with the order dated 18.02.2013 passed by the ESI Court in a petition preferred by him under Section 75 of the ESI Act challenging the order passed under Section 45-A by which the petitioner-firm was brought within the ambit of the ESI Act, the said order would prevail as it has attained finality. A perusal of the said order dated 18.02.2013 (Annexure A-1) would show that no interest was granted by the Court while passing the order.

8. In view of the above, finding no illegality in the impugned order, the appeal being without merit stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.2779-CII of 2016, stands disposed of as infructuous.

February 08, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE